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Attorneys for Creditors,
Gene Descalzi and Leonarda Rombaoa

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
PG&E CORPORATION,
and
PACIFIC GAS AND ELECTRIC
COMPANY,
Debtors.

☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

*All papers shall be filed in the Lead Case,
No. 19-30088-DM.

Case No. 19-30088-DM

Chapter 11
Lead Case, Jointly Administered

**MOTION PURSUANT TO FED. R.
BANKR. P. 9006(b)(1) TO ENLARGE
THE TIME FOR GENE DESCALZI AND
LEONARDA ROMBAOA TO FILE
PROOF OF CLAIMS**

Date: May 12, 2020
Time: 10:00a.m.
Place: 450 Golden Gate Avenue, Ctrm 17
San Francisco, CA 94102
Judge: Dennis Montali

Objection Deadline: May 5, 2020

Pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, by this
motion ("Motion") Gene Descalzi and Leonarda Rombaoa ("Movants") seek an order
expanding the time for them to file their proof of claims in these cases, a true copy of which is
attached to the accompanying Declaration of Arsen Sarapinian as **Exhibit 1**, and leave to file

1 ballots prior to the May 15, 2020 deadline in this matter. Movants filed these claims with the
2 claims register, albeit late, on February 26, 2020¹ and hereby seek an order deeming them as
3 timely under the circumstances described below, or, alternatively, an order allowing Movants
4 additional time to file new claims. Movants seek leave to file ballots related to the proposed
5 settlement in this matter, which are due on May 15, 2020. This Motion is based upon the points
6 and authorities set forth herein, the concurrently filed Notice of Hearing, the Declaration of
7 Arsen Sarapinian (“Sarapinian Decl.”), the Declaration of Gene Descalzi (“Descalzi Decl.”), the
8 Declaration of Leonarda Rombaoa (“Rombaoa Decl.”), and any evidence or oral argument
9 presented at the time the hearing on this matter. In support thereof, Movants, by and through its
10 undersigned counsel, respectfully represents as follows:
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13 **INTRODUCTION AND FACTUAL BACKGROUND**

14 The general bar date in these cases was October 21, 2019 (“*Original Bar Date*”). The
15 process for submission of timely claims has continued after the Original Bar Date. Pursuant to
16 the Stipulation Between Debtors and Official Committee of Tort Claimants to Extend Bar Date
17 for Fire Claimants and for Appointment of Claims Representative (Dkt# 4651), the Original Bar
18 Date was extended for the benefit of Unfiled Fire Claimants to December 31, 2019 at 5:00 p.m.
19 (Prevailing Pacific Time).
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21 Movants and creditors Gene Descalzi and Leonarda Rombaoa, who are husband and
22 wife, are survivors of the devastating fires that occurred in and around Santa Rosa in October of
23 2017, commonly referred to as the “Tubbs fire.” (Descalzi Decl; Rombaoa Decl.) On October 8
24 and 9 of 2017, Movants were vacationing in Santa Rosa and were lodging at the Hilton Sonoma
25 Wine Country Hotel. (Descalzi Decl; Rombaoa Decl.) In the early hours of October 9, 2017,
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28 ¹ The claim of Leonarda Rombaoa was amended due to a minor misspelling of her first name and filed on March 5, 2020

1 Movants were awoken to smoke and flames engulfing the nearby area and hotel. (Descalzi
2 Decl; Rombaoa Decl.) Movants had split seconds to react and escape the fire and had
3 insufficient time to save our personal property, some of which was had significant monetary
4 value. (Descalzi Decl; Rombaoa Decl.) The personal property perished in the fire and Movants
5 suffered economic damages as a result. (Descalzi Decl; Rombaoa Decl.) Movants also suffered
6 personal injuries, including but not limited to injuries from smoke inhalation, and severe
7 emotional distress, including but not limited to Post Traumatic Stress Disorder (PTSD), as a
8 result of the fire. (Descalzi Decl; Rombaoa Decl.)
9

10 In 2017, Movants retained James O'Callahan, Esq. of the Los Angeles-based law firm,
11 Girardi & Keese, to represent them in connection with the damages they incurred as a result of
12 the fire. (Descalzi Decl; Rombaoa Decl.) In 2017 and 2018, Movants were in communication
13 with Mr. O' Callahan regarding the case. (Descalzi Decl; Rombaoa Decl.)
14

15 In early 2019, Movants left messages for Mr. O' Callahan to call them, but did not hear
16 back from him. (Descalzi Decl; Rombaoa Decl.) Movants had assumed that Mr. O' Callahan
17 was working on their case, as well as other cases, and would contact them in the event of a
18 significant development. (Descalzi Decl; Rombaoa Decl.) On previous occasions, Mr. O'
19 Callahan and his staff responded to Movants' inquiries by telling them to wait patiently and that
20 they would be notified in the event of significant developments. (Descalzi Decl; Rombaoa
21 Decl.) Movants were mindful of Mr. O' Callahan's busy schedule and the complexities of the
22 North Bay Fire cases. (Descalzi Decl; Rombaoa Decl.)
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25 On or around February 11, 2020, Movants learned for the first time that Mr. O' Callahan
26 had died unexpectedly on January 29, 2019. (Descalzi Decl; Rombaoa Decl.) On February 13,
27 2020, Movants consulted the legal services of the Law Offices of Arsen Sarapinian, P.C. and
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1 signed a retainer agreement for the law firm to continue representing them in connection with
2 the Tubbs fire (related cases in the Superior Court of California commonly referred to as the
3 (“the North Bay Fires”) and this related bankruptcy matter. (Descalzi Decl; Rombaoa Decl.)
4 Around that time, Movants for the first time learned from Mr. Sarapinian that there were
5 bankruptcy claim deadlines of October 21, 2019 and December 31, 2019 for creditors (fire
6 victims) to submit claims in this matter. (Descalzi Decl; Rombaoa Decl.) Movants previously
7 had no knowledge of these deadlines as they were not provided to them by their former
8 attorney, this Court, Prime Clerk, or any other third party. (Descalzi Decl; Rombaoa Decl.) Mr.
9 Sarapinian learned that there was no record of claims having been submitted on Movants
10 behalves by their prior attorney. (Sarapinian Decl.)
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13 Movants’ counsel assisted them in preparing the claims, which were ultimately sent to
14 claims administrator Brown Greer for filing. Brown Greer in turn submitted the claims to Prime
15 Clerk, which filed the claims on February 26, 2020 (Claim Nos. 97038 and 97039, **Exhibit 1**)²
16 (Sarapinian Decl.) Neither Movants, nor their counsel, received notifications from Prime Clerk
17 or Brown Greer of the claims being rejected or objected to by any party, entity, or claims
18 administrator. (Sarapian Decl.; Descalzi Decl; Rombaoa Decl.)
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20 In April of 2020, Movants’ counsel learned that Prime Clerk would not send disclosures
21 and voting materials in relation to the proposed \$13.5 billion settlement in this bankruptcy
22 matter because they deemed Movants’ claims late and as a result, Movants were not included in
23 the “impaired class” for voting purposes. (Sarapinian Decl.) The voting deadline for creditors to
24 submit ballots in relation to the proposed settlement is May 15, 2020. (Sarapinian Decl.)
25

26 Movants hereby request that the Court grant this Motion based upon, among other things,
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² The claim of Leonarda Rombaoa was amended due to a minor misspelling of her first name and filed on March 5, 2020

1 Movants' excusable neglect, the excusable neglect of their former counsel, and intervening
2 circumstances beyond the Movants' control. The delay in submitting claims before the
3 December 31, 2019 deadline was not in the reasonable control of Movants and Movants have
4 made good faith efforts to rectify this situation by taking immediate actions. Movants seek an
5 order deeming the late-claims, attached as **Exhibit 1**, timely and valid. Alternatively, Movants
6 seek an order allowing Movants additional time to file new claims. Movants seek leave to file
7 ballots related to the proposed settlement in this matter, which are due by May 15, 2020. If this
8 Motion is denied, Movants will suffer severe prejudice and irreparable harm as they will be
9 barred from recovery for the significant damages they incurred in the fire.

10 **JURISDICTION AND VENUE**

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12 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and
13 1334, the Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General
14 Order 24 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States
15 District Court for the Northern District of California. This is a core proceeding pursuant to 28
16 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The
17 statutory predicate for the relief requested herein is Rule 9006(b)(1) of the Federal Rules of
18 Bankruptcy Procedure.

19 **BASIS FOR RELIEF REQUESTED**

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21 Bankruptcy Rule 9006(b)(1) allows the enlargement of time for "an act . . . required or
22 allowed to be done at or within a specified period . . . by order of court." Rule 9006(b)(1)
23 further provides:

24 [T]he court for cause shown may at any time in its discretion (1) with or without motion
25 or notice order the period enlarged if the request therefor is made before the expiration
26 of the period originally prescribed or as extended by a previous order or (2) on motion
27 of the party
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made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Bankruptcy Rule 9006(b)(1). “Excusable neglect” under Bankruptcy Rule 9006(b)(1) is a flexible concept and caselaw has identified a four non-exclusive factors to be considered:

With regard to determining whether a party's neglect of a deadline is excusable . . . we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [nonmovant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993) (citations omitted); see also *In re Orthopedic Bone Screw Prods. Liability Litig.*, 246 F.3d 315, 323 (3d Cir. 2001) (citing *Pioneer*, 507 U.S. at 395). Rule 9006(b)(1) allows “late filings caused by inadvertence, mistake, or carelessness, not just those caused by intervening circumstances beyond the party's control.” *Pioneer*, 507 U.S. at 381.

In *Pioneer*, a creditor represented by experienced bankruptcy counsel missed the proof of claim deadline because his lawyer overlooked the filing date in the bankruptcy court’s notice. The Supreme Court affirmed the Sixth Circuit’s finding of excusable neglect and endorsed a balancing test, the hallmark of which is consideration of various factors to aid in determining whether a movant’s neglect of a bar date was excusable, thereby justifying a late proof of claim filing. This equitable determination is to “tak[e] account of all relevant circumstances surrounding the party’s omission.” *Id.* at 395, 113 S. Ct. at 1498; see also *Corning v. Corning (In re Zilog, Inc.)*, 450 F.3d 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list of relevant factors). Here, consideration of all four *Pioneer* factors—as well as a fifth engrafted onto the *Pioneer* analysis by some courts—weighs in favor of Movants.

1 Because in this case there is no danger of prejudice to the Debtors, the first *Pioneer*
2 factor weighs overwhelmingly in Movant's favor. Debtors estates are solvent, and all creditors
3 stand to be paid. *See, e.g., In re Best Payphones, Inc.*, 523 B.R. 54, 75-6 (Bankr. S.D.N.Y.
4 2015) (citing Scott I. Davidson & Jennifer A. Bender, *Late-Filed Claims are not Always*
5 *Excluded from the Distribution Party*, AM. BANKR. INST. J. 16, 62 (Jan. 2014)) (where
6 unsecured creditors will be made whole, "the debtor will not be able to object to a proof of
7 claim solely on the grounds that the proof of claim was filed after the bar date.") and *In re*
8 *Sheehan Mem'l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate
9 is solvent, "the proper remedy for a late filing is not the expungement of a claim, but its
10 allowance as a tardily filed claim only.). The value of Movants' claims relative to the value of
11 Debtors' estates speaks to the absence of prejudice even if the estates were not solvent (which
12 they are). *See, e.g., In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the
13 late claim in relation to the estate is a consideration in determining prejudice).

14 Beyond the Debtors' solvency, any prospect of disruptive prejudice seems unlikely here
15 because Debtors' reorganizations are in the early stages. The disclosurance statements and
16 voting materials were just recently mailed to creditors. The voting deadline is May 15, 2020.
17 Distributions have not been made.

18 Consideration of the second *Pioneer* factor, the length of the delay and its potential
19 impact on these proceedings, also strongly favors Movants. Here, as declared in the
20 Declarations of Gene Descalzi and Leonarda Rombaoa, Movants missed the applicable bar date
21 by approximately two months due to no fault of their own. *See In re Lyondell Chemical Co.*,
22 543 B.R. 400, 410 (Bankr. S.D.N.Y. 2016) (length of delay is only given meaning by its effect
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1 on the administration of the case). Furthermore, Movants' filings, if permitted by the Court,
2 would have little to no appreciable impact on these proceedings.

3 As to the third *Pioneer* factor, the reason for the delay and whether it was in Movants
4 reasonable control, does not move the *Pioneer* needle in the direction of inexcusability.
5 Movants acknowledge this Court's observation that "[o]n balance, ... the authorities construing
6 *Pioneer* weigh the reasons for the delay factor most heavily." *In re Pacific Gas & Electric, Co.*,
7 311 B.R. 84, 91 (Bankr. N.D. Cal. 2004) (citing *Graphic Communications Int'l Union, Local*
8 *12-N v. Quebecor Printing Providence, Inc.*, 270 F.3d 1 (1st Cir. 2001)).³ A "satisfactory
9 explanation for the late filing" is required. *Graphic Communications* at 5.
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11 In *Pincay v. Andrews*, 389 F.3d 853, 855-56 (9th Cir. 2004) (en banc), *cert. denied*, 544
12 U.S. 961, 125 S.Ct. 1726, 161 L.Ed.2d 602 (2005), the Ninth Circuit applied *Pioneer* to hold
13 that a district court did not abuse its discretion in finding excusable neglect when a sophisticated
14 law firm missed a notice of appeal deadline because a paralegal has mistakenly calendared the
15 60-day deadline applicable to government parties instead of the correct 30-day deadline.
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17 In *In re Zilog*, which also involved a late proof of claim, a panel of the Ninth Circuit
18 found excusable neglect based on an ambiguous email from debtor's general counsel to three
19 unrepresented employees that the court found "was not calculated to inform the women that
20 they needed to file their wage claims with the bankruptcy court." 450 F.3d at 1003. The Ninth
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23 ³ That said, the Fifth and Eleventh Circuits and courts in at least two other circuits (the Third and the Eighth) have
24 identified the danger of prejudice is the most important of the *Pioneer* factors. See *Greyhound Lines, Inc. v. Rogers*
25 (*In re Eagle Bus Mfg., Inc.*), 62 F.3d 730, 737 (5th Cir. 1995) ("Under *Pioneer*, the central inquiry is whether the
26 debtor will be prejudiced."); *Advanced Estimating System, Inc. v. Riney*, 77 F.3d 1322, 1325 (11th Cir. 1996)
27 ("Primary importance should be accorded to the absence of prejudice to the nonmoving party and to the interest of
28 efficient judicial administration."); *In re Cable & Wireless USA, Inc.*, 338 B.R. 609, 614 (Bankr. D. Del. 2006)
(quoting *In re Tannen Towers Acquisition Corp.*, 235 B.R. 748, 755 (D.N.J. 1999) ("In applying the *Pioneer* test,
courts place the greatest weight on whether any prejudice to the other parties will occur by allowing a late claim.");
Matter of Papp Intern., Inc., 189 B.R. 939, 944 (Bankr. D. Neb. 1995) (citing *In re Sacred Heart Hos. of*
Norristown, 186 B.R. 891 as suggesting "the most significant [*Pioneer*] factor ... is that of prejudice to the
debtor.").

1 Circuit's comment in *In re Zilog* resonates here: "It would be very strange indeed to find the
2 neglect in our case inexcusable, when the neglect in *Pioneer* and *Pincay* was found excusable."
3 450 F.3d at 1006.

4 Here, Movants were never informed of the any of the claim deadline of October 21,
5 2019 and December 31, 2019, nor were they informed of their that their prior counsel, Mr. O'
6 Callahan had died unexpectedly on January 29, 2019. (Descalzi Decl; Rombaoa Decl.) There
7 is no record or evidence to the contrary. Any mistake on the part of Movants should be deemed
8 excusable. Also, the prior law firm's failure to notify Movants of these significant
9 developments should be deemed excusable neglect and such neglect should not bar Movants
10 from pursuing their claims through no fault of their own.
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12 Finally, as to the fourth *Pioneer* factor, no reasonable contention can be made that
13 Movants failed to act in good faith. They did not have any knowledge of the filing deadlines.
14 Upon learning of their of the deadlines on February 21, 2020, Movants thereafter made
15 immediate, good faith steps to rectify the situation by retaining new counsel, filing claims
16 (albeit late), and filing this Motion upon learning that they would not receive voting materials.
17 (Descalzi Decl; Rombaoa Decl; Sarapinian Decl.)
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19 Because consideration of the *Pioneer* factors points overwhelmingly to Movants'
20 neglect having been excusable, late filings of the claim should be permitted, and Movants
21 should be permitted to cast voting ballots prior to the May 15, 2020 deadline.
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23 CONCLUSION

24 For the reasons set forth above, Movants respectfully request that this Court enter an
25 order pursuant to Bankruptcy Rule 9006(b)(1) as follows:
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- 27 1. Granting this Motion;
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- 1 2. Directing that Exhibit 1 hereto be deemed timely filed;
- 2 3. Or, alternatively, Directing that Movants shall have until 30 days from the date of the
- 3 filing of this Motion to submit "Attachment 1" to Prime Clerk as referenced on Exhibit 1
- 4 hereto.
- 5 4. Directing Prime Clerk to provide Movants with disclosure and ballot materials to
- 6 Movants, and allowing Movants to file voting ballots in this matter.
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- 8 5. Granting such other or further relief as the Court deems just and proper.
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10 Date: April 15, 2020

**LAW OFFICES OF ARSEN
SARAPINIAN, P.C.**

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14 By: 

Arsen Sarapinian, Esq.
Attorneys for Creditors,
Gene Descalzi and Leonarda Rombaoa

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